

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JANE DOE on behalf of herself and her minor child; JANE BOE, Sr. on behalf of herself and her minor child; JOHN COE, Sr. and JANE COE, Sr. on behalf of themselves and their minor children; JOHN FOE, Sr. on behalf of himself and his minor child; JANE GOE, Sr. on behalf of herself and her minor child; JANE LOE on behalf of herself and her medically fragile child; JANE JOE on behalf of herself and her medically fragile child; CHILDRENS HEALTH DEFENSE, and all others similarly situated,

Plaintiffs,

-against-

HOWARD ZUCKER, in his official capacity as Commissioner of Health for the State of New York; ELIZABETH RAUSCH-PHUNG, M.D., in her official capacity as Director of the Bureau of Immunizations at the New York State Department of Health; the NEW YORK STATE DEPARTMENT OF HEALTH; THREE VILLAGE CENTRAL SCHOOL DISTRICT; CHERYL PEDISICH, acting in her official capacity as Superintendent, Three Village Central School District; CORINNE KEANE, acting in her official capacity as Principal Paul J. Gelinas Jr. High School, Three Village Central School District; LANSING CENTRAL SCHOOL DISTRICT; CHRIS PETTOGRASSO, acting in her official capacity as Superintendent, Lansing Central School District; CHRISTINE REBERA, acting in her official capacity as Principal, Lansing Middle School, Lansing Central School District; LORRI WHITEMAN, acting in her official capacity as Principal, Lansing Elementary School, Lansing Central School District; PENFIELD CENTRAL SCHOOL DISTRICT; DR. THOMAS PUTNAM, acting in his official capacity as Superintendent, Penfield Central School District; SOUTH HUNTINGTON SCHOOL DISTRICT; DR. DAVID P. BENNARDO, acting in his official capacity

Docket No. 20-CV-0840
(BKS) (CFH)

**AFFIDAVIT OF
JACK GEFFKEN, D.O.**

as Superintendent, South Huntington School District; BR. DAVID MIGLIORINO, acting in his official capacity as Principal, St. Anthony's High School, South Huntington School District; ITHACA CITY SCHOOL DISTRICT; DR. LUVELLE BROWN, acting in his official capacity as Superintendent, Ithaca City School District; SUSAN ESCHBACH, acting in her official capacity as Principal, Beverly J. Martin Elementary School, Ithaca City School District; SHENENDEHOWA CENTRAL SCHOOL DISTRICT; DR L. OLIVER ROBINSON, acting in his official capacity as Superintendent, Shenedehowa Central School District; SEAN GNAT, acting in his official capacity as Principal, Koda Middle School, Shenendehowa Central School District; ANDREW HILLS, acting in his official capacity as Principal, Arongen Elementary School, Shenendehowa Central School District; COXSACKIE-ATHENS SCHOOL DISTRICT; RANDALL SQUIER, Superintendent, acting in his official capacity as Superintendent, Coxsackie-Athens School District; FREYA MERCER, acting in her official capacity as Principal, Coxsackie Athens High School, Coxsackie-Athens School District; ALBANY CITY SCHOOL DISTRICT; KAWEEEDA G. ADAMS, acting in her official capacity as Superintendent, Albany City School District; MICHAEL PAOLINO, acting in his official capacity as Principal, William S. Hackett Middle School, Albany City School District; and all others similarly situated,

Defendants.

STATE OF NEW YORK :

: ss:

COUNTY OF SUFFOLK :

JACK GEFFKEN, D.O. deposes and states the following to be true under penalty of perjury:

1. I am the Chief Medical Officer for South Huntington Union Free School District (the "District"), a defendant in this matter. I have held this position since July 14, 2015. I submit this Affidavit based on my personal knowledge and review of my records.

2. I am an internal medicine specialist who graduated from the New York Institute of Technology College of Osteopathic Medicine. I am affiliated with NYU Winthrop Hospital and am a clinical assistant professor at the NYU Long Island School of Medicine. I am a fellow of the American College of Physicians. I submit this Affidavit in support of the District's opposition to plaintiffs' motion for a preliminary injunction.

3. I am aware that the District employs nurses to work within St. Anthony's High School, a private Catholic high school located in Melville, NY. In my capacity as District Chief Medical Officer I review requests for medical exemptions submitted by District students as well as St. Anthony's students who reside within the District's boundaries. In this capacity, I communicate with nurses Kathleen Barnosky, Jane Samuels, and Sally Cappy.

4. In 2019, New York State revised the law for students to qualify for a medical exemption from the vaccination requirements set by the State. The District must abide by the laws set by the State.

5. Plaintiff John Loe is a high school student at St. Anthony's who resides within the District. John Loe started school in September 2019 without providing proof of the required: 1) Tdap vaccination (Tdap is short for the Tetanus, Diphtheria, Pertussis) and 2) meningitis vaccination.

6. On September 6, 2019, Nurse Barnosky emailed John Loe's mother, Jane Loe, to remind her that a medical exemption request form was due ASAP as such requests had to be

received within 14 days of a student's first day of school. (A copy of the email is attached as Exhibit SH-A.)

7. In the September 6, 2019 email, Nurse Barnosky further advised that two exemption forms were needed, one for the Tdap vaccine and one for the meningitis vaccine, as New York no longer accepts one form for multiple vaccines. If the forms were not received by September 19, 2019, John Loe would be excluded from school as of September 20, 2019. (*See* Ex. SH-A.)

8. On September 13, 2019, John Loe's parent submitted a medical exemption form signed in August 2019. (A copy of the form is attached as Exhibit SH-B.)

9. On September 13, 2019, Nurse Barnosky sent Loe's request form to me advising that the Loes were seeking a medical exemption to all vaccines, which was contrary to the directive given to the Loes that the State mandates a separate form for each vaccine exemption request. (A copy of the email is attached as Exhibit SH-C.)

10. On September 16, 2019, Nurse Barnosky wrote to Jane Loe to advise that I had been in contact with John Loe's doctor, Rosario Trifiletti, M.D. (A copy of the email chain is attached as Exhibit SH-D.)

11. Dr. Trifiletti reported to me that John Loe was no longer a patient and that the form requesting a medical exemption for the Tdap and meningitis vaccines has been redacted. As such, I could not recommend approval of medical exemption request. (*See* Ex. SH-D.)

12. Jane Loe responded by email that same day, September 16, 2019. Jane Loe wrote that the medical exemption from June 2018 was a 2-year exemption and would not expire until June 2020. (*See* Ex. SH-D.)

13. In her September 16, 2019 email, Jane Loe wrote that a member of Dr. Trifiletti's staff did not like her and claimed this has caused problems. Mrs. Loe attributed any confusion about the medical exemption to that staff member. Mrs. Loe urged the District to grant a medical exemption based on the June 2018 and August 2019 exemption form submissions. (*See* Ex. SH-D.)

14. I responded that medical exemption requests must be submitted annually, thereby invalidating the June 2018 submission. In addition, the 2018 medical exemption request would have been issued before the enactment of the 2019 regulations requiring the meningococcal vaccination. (*See* Ex. SH-D.)

15. As to the August 2019 submission, I required the medical exemption form to be submitted from a currently treating physician. (*See* Ex. SH-D.)

16. The August 2019 form had been invalidated by the submitting physician, Dr. Trifiletti, and the family could either withdraw the student until they could obtain a medical exemption or provide the vaccines to the student. (*See* Ex. SH-D.)

17. On September 21, 2019, I wrote to District Assistant Superintendent April Poprilo and explained I had been asked to review an immunization exemption form filled out by Dr. Trifiletti on August 27, 2019. The form indicated John Loe had an autoimmune encephalopathy from a thyroid issue and was receiving sporadic steroids. (A copy of the letter is attached as Exhibit SH-E.)

18. I explained in my letter that I had called Dr. Trifiletti on September 13, 2019 and was told that John Loe was no longer in his care and that he redacted the form. As a result, I advised the school nurse by email on September 16, 2019 that an update exemption form needed to be submitted with appropriate documentation. (*See* Ex. SH-E.)

19. In my September 21, 2019 letter, I noted that steroids can be a short-term reason to delay immunization. It would not satisfy the exemption requirement. I could not recommend approval of the medical exemption. (*See* Ex. SH-E.)

20. On November 14, 2019, Dr. Bouboullis signed immunization exemption forms for Tdap and meningitis. These were provided by John Loe's parents on November 20, 2019. (A copy of the letter is attached as Exhibit SH-F.)

21. On December 10, 2019, Nurse Barnosky advised Jane Loe that the exemption request did not fall within the parameters set by New York State. This was based on my determination and the Loes needed to execute a release so I could speak with Dr. Bouboullis directly. (A copy of the email is attached as Exhibit SH-G.)

22. The Loes received the consent form and returned it completed. (*See* Ex. SH-G.)

23. On December 11, 2019, I called Dr. Bouboulis and left a detailed voicemail message. On December 13, 2019, Nurse Barnosky encouraged Jane Loe to contact Dr. Bouboulis and have him respond to me. (A copy of the email is attached as Exhibit SH-H.)

24. I called again on December 16, 2019 and spoke with Dr. Bouboulis' office staff. I explained that the exemption request did not match the child's prior reaction and I required clarification on the immune system issues cited. I indicated I could not recommend approval of the request unless I heard back from Dr. Bouboulis. I did not receive a return phone call. (A copy of my December 21, 2019 letter to April Poprilo is attached as Exhibit SH-I.)

25. I found that immune deficient people should usually abstain from live vaccines. Here, neither the Tdap nor meningitis vaccine is a live vaccine. Also, Tdap is contradicated in unstable seizures and this does not seem to be the case here. (*See* Ex. SH-I.)

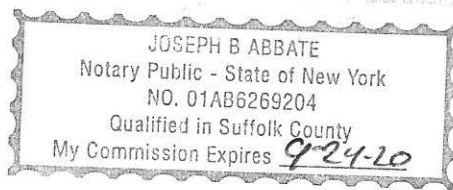
26. On December 21, 2019, I could not recommend approval of the exemption request. The exemption form provided that John Loe has an autoimmune encephalopathy and had a reaction to H1N1 in the past. The prior doctor's note attributed the autoimmune encephalopathy to a thyroid issue. Their physician failed to return my calls so I could not recommend approval without speaking with him. (See Ex. SH-I.)

27. On January 6, 2020, I wrote to April Poprilo to advise I had spoken to Dr. Bouboulis and that we reviewed the case together and discussed the prior reaction to H1N1 and that the student had other vaccinations. Dr. Bouboulis could not argue against vaccinating the student with Tdap or Menactra and I could not recommend approval of the exemption. (A copy of my January 6, 2020 letter is attached as Exhibit SH-J.)

28. The student had a Tdap vaccine in the past without any reported adverse events. The student required a booster shot in 2019 as per New York State regulations. In addition, nothing about the prior reaction to H1N1 raised cause for medical concern about taking the meningitis vaccine. Dr. Bouboulis agreed with my assessment.

29. It is my understanding John Loe withdrew from St. Anthony's.

30. The District has abided by the law and followed DOH guidelines in examining the exemption request.





JACK GEFFKEN, D.O.

Sworn to before me
this 2 day of September, 2020



NOTARY PUBLIC